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April 5, 2021

VIA CM/ECF

The Honorable Leonard P. Stark
Chief U.S. District Judge, District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Unit 26, Room 6124
Wilmington, DE 19801-3555

Re: Xcoal Energy & Resources v. Bluestone Energy Sales Corporation, et al.,
Case No. 18-819-LPS

Dear Chief Judge Stark:

Pursuant to Your Honor's Order of March 29, 2021 (D.I. 163), the parties were required to meet and confer and to submit by today "a joint status report, advising the Court what, if anything, remains to be determined in this action, as well as their proposal(s) for how the Court should resolve any such issues." The parties so met and conferred, and hereby submit the below as their joint status report to the Court.

A. Guidance Regarding Whether the Court's March 29, 2021 Order Constitutes a Judgment.

During the parties' meet-and-confer-efforts, counsel discussed the threshold issue of whether the Court's March 29, 2021 Order (D.I. 163) constitutes a judgment under Rule 58 of the Federal Rules of Civil Procedure. Plaintiff is presently proceeding under the presumption that the Order is a judgment under Rule 58. However, the parties mutually request that the Court provide further guidance confirming whether the March 29th Order was intended by the Court to be the entry of judgment under Rule 58. Whether the Order constitutes a judgment will impact the timing by which, *inter alia*, (i) Plaintiff must move the Court for an award of attorney's fees, nontaxable expenses, and/or prejudgment interest, and (ii) Defendants must move the Court for certain post-trial relief on legal or other issues, including a potential stay of execution on or enforcement of the judgment by Defendants' providing of bond or other security satisfactory to the Court pursuant to Rule 62.

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B. Plaintiff's Contemplated Motions.

Plaintiff separately states as follows with respect to the motions it contemplates filing with the Court:

Plaintiff anticipates filing motions for an award of attorney's fees and related nontaxable expenses, pre-judgment and post-judgment interest, and taxable costs. Defendants have indicated that they will likely oppose Plaintiff's motion for attorney's fees and related nontaxable expenses in whole or in part as to entitlement and/or amount. Defendants have also indicated that they may or may not oppose Plaintiff's request for pre-judgment and post-judgment interest and for taxable costs as to entitlement and/or amount, and such decision will be made after Defendants' review of the details of the contemplated motion as filed.

Plaintiff proposes the following schedule for the submission of such motions.

1. Motion for Attorney's Fees, Related Nontaxable Expenses, and Taxable Costs.

Pursuant to Rule 54(d)(2)(B), unless this Court orders otherwise, Plaintiff must move for attorney's fees and related nontaxable expenses no later than fourteen (14) days after the entry of judgment. Plaintiff also anticipates moving for taxable costs at the same time as it moves for attorney's fees and related nontaxable expenses.

Plaintiff proposes the following schedule for the Court's consideration:

- No later than fourteen (14) days after the March 29, 2021 Order, Plaintiff shall file a motion for attorney's fees, nontaxable expenses, and taxable costs in accordance with the provisions of Rule 54(d)(2)(B)(i)-(iv).
- No later than seven (7) days after filing its motion, Plaintiff shall file a brief and any other documentation in support thereof.
- No later than fourteen (14) days after Plaintiff files its brief and other documentation supporting its motion, Defendants shall file their answering brief and any documentation in support thereof.
- No later than seven (7) days after Defendants file their answering brief, Plaintiff shall file a reply thereto and any documentation in support thereof.

2. Motion for Pre-Judgment and Post-Judgment Interest.

Pursuant to Rule 59(e), a motion to alter or amend a judgment must be filed no later than twenty-eight (28) days after the entry of the judgment. Consistent with Rule 59(e), Plaintiff anticipates filing a motion for pre-judgment and post-judgment interest within twenty-eight (28)

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days after the March 29, 2021 Order. Plaintiff proposes the following schedule for the Court's consideration:

- No later than twenty-eight (28) days after the March 29, 2021 Order, Plaintiff shall file a motion together with any brief and supporting documentation for pre-judgment and post-judgment interest.
- After the filing of said motion, the parties will meet and confer regarding the relief requested therein, including as to whether Defendants will consent or stipulate in whole or in part as to entitlement and/or amount.
- No later than fourteen (14) days after Plaintiff files its motion, Defendants shall file their answering brief and any documentation in support thereof.
- No later than seven (7) days after Defendants file their answering brief, Plaintiff shall file a reply thereto and any documentation in support thereof.

C. Defendants' Position and Contemplated Motions.

Defendants separately state as follows with respect to Plaintiff's above proposal and the motion(s) Defendants contemplate filing with the Court:

- Defendants take the position that all briefing should be done in accordance with Local Rule 7.1.2 and the prescribed timelines. However, Defendants do not oppose Plaintiff's proposed timeline.
- Defendants are considering whether to provide a bond in accordance with Fed. R. Civ. P. 62(b).
- Currently, Defendants intend to file a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) and/or a motion for reargument.

Should Your Honor have any questions or concerns regarding the foregoing, counsel are available at the Court's convenience.

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Sincerely yours,

/s/ Geoffrey G. Grivner

Geoffrey G. Grivner (#4711)

GGG/

cc: All Counsel of Record via ECF